

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

No.: **ICC-01/04-01/06**

Date: **16 June 2017**

TRIAL CHAMBER II

Before: Judge Marc Perrin de Brichambaut, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Péter Kovács

**SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO
IN THE CASE OF
*THE PROSECUTOR v. THOMAS LUBANGA DYILO***

Public

**Decision on the Applications of the Office of Public Counsel for Victims and the
Legal Representatives of the V02 Group of Victims for Leave to Reply to the
Observations of the Defence Team of Thomas Lubanga Dyilo
of 22, 30 and 31 May 2017**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

Office of the Prosecutor

Counsel for Thomas Lubanga Dyilo

Ms Catherine Mabilie

Mr Jean-Marie Biju-Duval

Legal Representatives of V01 Victims

Mr Luc Walleyen

Mr Franck Mulenda

Legal Representatives of V02 Victims

Ms Carine Bapita Buyangandu

Mr Paul Kabongo Tshibangu

Mr Joseph Keta Orwinyo

Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Trust Fund for Victims

Mr Pieter de Baan

TRIAL CHAMBER II (“Chamber”) of the International Criminal Court (“Court”), acting pursuant to regulations 24(5) and 34(c) of the Regulations of the Court (“RoC”), issues the following decision.

I. Procedural history

1. On 22 February 2017, the Chamber issued an order setting a schedule and the conditions for the transmission to the Defence team for Thomas Lubanga Dyilo (“Defence”) of the applications of victims potentially eligible for reparations in the instant case, and setting time limits for the Defence to file observations on those applications (“Order of 22 February 2017”).¹

2. On 8 March 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a first batch of applications of potentially eligible victims (“First Transmission of Redacted Applications”).²

3. On 22 March 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a second batch of applications of potentially eligible victims (“Second Transmission of Redacted Applications”).³

4. On 5 April 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a third batch of applications of potentially eligible victims (“Third Transmission of Redacted Applications”).⁴

¹ “Ordonnance relative à la transmission des dossiers de victimes potentiellement éligibles aux réparations à l’équipe de défense de Thomas Lubanga Dyilo”, 22 February 2017, ICC-01/04-01/06-3275.

² “First Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 8 March 2017, ICC-01/04-01/06-3276 and confidential redacted annexes 1-31.

³ “Second Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 22 March 2017, ICC-01/04-01/06-3281 and confidential redacted annexes 1-23.

⁴ “Third Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Order ICC-01/04-01/06-3275 of 22 February 2017”, 5 April 2017, ICC-01/04-01/06-3288 and confidential redacted annexes 1-95.

5. On 10 April 2017, in accordance with the Chamber's instructions, the Defence filed its observations on the First Transmission of Redacted Applications.⁵

6. On 24 April 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a fourth batch of applications of potentially eligible victims ("Fourth Transmission of Redacted Applications").⁶

7. On the same day, in accordance with the Chamber's instructions, the Defence filed its observations on the Second Transmission of Redacted Applications.⁷

8. On 4 May 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a fifth batch of applications of potentially eligible victims ("Fifth Transmission of Redacted Applications").⁸

9. On 5 May 2017, in accordance with the Chamber's instructions, the Defence filed its observations on the Third Transmission of Redacted Applications.⁹

10. On the same day, the Office of Public Counsel for Victims ("OPCV") filed submissions on the "*Observations de la Défense de M. Lubanga à la deuxième transmission des formulaires de réparation expurgés du 22 mars 2017*" ("OPCV Submissions of 5 May 2017").¹⁰

⁵ "*Observations de la Défense de M. Lubanga à la première transmission des formulaires de réparation expurgés du 8 mars 2017*", 10 April 2017, ICC-01/04-01/06-3291 and three confidential annexes.

⁶ "Fourth Transmission to the Defence of Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017", 24 April 2017, ICC-01/04-01/06-3298 and confidential redacted annexes 1-92.

⁷ "*Observations de la Défense de M. Lubanga à la première transmission des formulaires de réparation expurgés du 8 mars 2017*", 10 April 2017, ICC-01/04-01/06-3299 and one confidential annex.

⁸ "Fifth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017", 4 May 2017, ICC-01/04-01/06-3305 and confidential redacted annexes 1-61.

⁹ "*Observations de la Défense de M. Lubanga à la troisième transmission des formulaires de réparation expurgés du 5 avril 2017*", ICC-01/04-01/06-3311 and two confidential annexes.

¹⁰ "*Soumissions relatives aux 'Observations de la Défense de M. Lubanga à la deuxième transmission des formulaires de réparation expurgés du 22 mars 2017'*", 5 May 2017, ICC-01/04-01/06-3306.

11. On 18 May 2017, in accordance with the schedule set by the Chamber, the Registry transmitted to the Defence redacted versions of a sixth batch of applications of potentially eligible victims (“Sixth Transmission of Redacted Applications”).¹¹

12. On 19 May 2017, the Chamber issued a decision partly granting the request of the Defence set forth in its document of 26 April 2017¹² and granting the Defence request of 26 April 2017.¹³ The Chamber thereby declared the OPCV document of 13 April 2017¹⁴ to be admissible, but the OPCV Submissions of 5 May 2017¹⁵ and the document of the Legal Representatives of the V01 and V02 Group of Victims of 12 April 2017¹⁶ to be inadmissible, stipulating that, pursuant to regulation 24(5) of the RoC, a party must apply for leave from the Chamber to reply.¹⁷

13. On 22 May 2017, in accordance with the Chamber’s instructions, the Defence filed its observations on the Fourth Transmission of Redacted Applications (“Defence Observations of 22 May 2017”).¹⁸

¹¹ “Sixth Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 18 May 2017, ICC-01/04-01/06-3313 and confidential redacted annexes 1-60.

¹² “Réponse de l’équipe de Défense de M. Lubanga aux ‘Informations relatives aux enjeux ainsi qu’aux préoccupations et souhaits des bénéficiaires potentiels dans la procédure en réparations’ déposées par le Bureau du conseil public pour les victimes”, 26 April 2017, ICC-01/04-01/06-3300.

¹³ “Requête de l’équipe de Défense de M. Lubanga aux fins de voir déclarer irrecevable la ‘Réponse des Représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars 2017’”, 26 April 2017, ICC-01/04-01/06-3301. Also “Réponse des représentants des victimes à la requête de la Défense aux fins de voir déclarer irrecevable la ‘Réponse des représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars 2017’”, 5 May 2017, ICC-01/04-01/06-3308.

¹⁴ “Informations relatives aux enjeux ainsi qu’aux préoccupations et souhaits des bénéficiaires potentiels dans la procédure en réparations”, 13 April 2017, ICC-01/04-01/06-3293-Conf. A corrected version and an explanatory note were filed on 25 April 2017 (ICC-01/04-01/06-3293-Conf-Corr and ICC-01/04-01/06-3293-Conf-Corr-Anx). A public redacted version was filed on the same day (ICC-01/04-01/06-3293-Red).

¹⁵ “Soumissions relatives aux ‘Observations de la Défense de M. Lubanga à la deuxième transmission des formulaires de réparation expurgés du 22 mars 2017’”, 5 May 2017, ICC-01/04-01/06-3306.

¹⁶ “Réponse des Représentants des victimes aux observations de la Défense à la première transmission des formulaires de réparation expurgés du 8 mars 2017”, 21 April 2017, ICC-01/04-01/06-3296.

¹⁷ “Décision relative à la recevabilité des documents déposés par les parties les 13 et 21 avril 2017 et le 5 mai 2017”, 19 May 2017, ICC-01/04-01/06-3314, para. 22.

¹⁸ “Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017”, 22 May 2017, ICC-01/04-01/06-3315, and two confidential annexes.

14. On 26 May 2017, the OPCV filed an application for leave to reply to the Defence Observations of 22 May 2017 ("OPCV Application of 26 May 2017").¹⁹
15. On 29 May 2017, in accordance with the Chamber's instructions, the Legal Representatives of the V01 Victims²⁰ and the Legal Representatives of the V02 Group of Victims²¹ filed their respective responses to the OPCV document of 13 April 2017.
16. On 30 May 2017, the Defence filed its response to the OPCV document of 13 April 2017 ("Defence Response of 30 May 2017").²²
17. On the same day, in accordance with the Chamber's instructions, the Defence filed its observations on the Fifth Transmission of Redacted Applications ("Defence Observations of 30 May 2017").²³
18. On 31 May 2017, the Defence filed its observations on the Sixth Transmission of Redacted Applications ("Defence Observations of 31 May 2017").²⁴
19. On the same day, the Defence filed a response to the OPCV Application of 26 May 2017, requesting that the application be rejected.²⁵
20. On 1 June 2017, in accordance with the Chamber's instructions, the Registry transmitted to the Defence redacted versions of a seventh batch of applications ("Seventh Transmission of Redacted Applications").²⁶

¹⁹ "Demande d'autorisation de déposer une réplique aux 'Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017'", 26 May 2017, ICC-01/04-01/06-3316.

²⁰ "Réponse du groupe de victimes V01 aux observations de l'OPCV du 13 avril 2017", 29 May 2017, ICC-01/04-01/06-3317.

²¹ "Réponse de l'équipe V02 de représentants légaux de victimes aux informations ICC-01/04-01/06-3293 du BPCV", 29 May 2017, ICC-01/04-01/06-3318-Conf.

²² "Réponse de la Défense de M. Lubanga aux 'Informations relatives aux enjeux ainsi qu'aux préoccupations et souhaits des bénéficiaires potentiels dans la procédure en réparations' déposées par le Bureau du conseil public pour les victimes le 13 avril 2017", dated 29 May 2017 and registered on 30 May 2017, ICC-01/04-01/06-3319 and two public annexes.

²³ "Observations de la Défense de M. Lubanga à la cinquième transmission des formulaires de réparation expurgés du 4 mai 2017", 30 May 2017, ICC-01/04-01/06-3320 and one confidential annex.

²⁴ "Observations de la Défense de M. Lubanga à la sixième transmission des formulaires de réparation expurgés du 18 mai 2017", 31 May 2017, ICC-01/04-01/06-3322 and one confidential annex.

²⁵ "Réponse de la Défense de M. Lubanga à la 'Demande d'autorisation de déposer une réplique aux 'Observations de la Défense de M. Lubanga à la quatrième transmission des formulaires de réparation expurgés du 24 avril 2017'", filed on 26 May 2017, dated 31 May 2017, ICC-01/04-01/06-3321.

21. On 2 June 2017, the OPCV filed an application for leave to reply to the Defence Observations of 30 May 2017 and to the Defence Observations of 31 May 2017 (“OPCV Application of 2 June 2017”).²⁷

22. On the same day, the Legal Representatives of the V02 Group of Victims filed an application for leave to reply to the Defence Response of 30 May 2017 (“Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017”).²⁸

23. On 5 June 2017, the Defence filed a response to the OPCV Application of 2 June 2017, requesting that the OPCV Application of 2 June 2017 be rejected.²⁹

II. Analysis

24. Considering that the OPCV Application of 26 May 2017, the OPCV Application of 2 June 2017 and the Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017 concern the same procedural issue – namely whether a reply is justified – the Chamber deems it appropriate to address them in the same decision.

²⁶ “Seventh Transmission to the Defence of Confidential Redacted Applications for Reparations pursuant to Trial Chamber II Decision ICC-01/04-01/06-3290 of 6 April 2017”, 1 June 2017, ICC-01/04-01/06-3324 and confidential redacted annexes 1-60.

²⁷ “Demande d’autorisation de déposer une réplique aux Observations de la Défense de M. Lubanga aux cinquième et sixième transmissions des formulaires de réparation expurgés”, 2 June 2017, ICC-01/04-01/06-3325.

²⁸ “Demande d’autorisation de l’équipe V02 à déposer une réplique aux observations de la Défense de Monsieur Lubanga (ICC-01/04-01/06-3319 + Anxs) conformément à la norme 24-5 du Règlement de la Cour”, 2 June 2017, ICC-01/04-01/06-3326.

²⁹ “Réponse de la Défense de M. Lubanga à la ‘Demande d’autorisation de déposer une réplique aux Observations de la Défense de M. Lubanga aux cinquième et sixième transmissions des formulaires de réparation expurgés’ déposée le 2 juin 2017”, filed on 2 June 2017 and registered on 5 June 2017, ICC-01/04-01/06-3327.

25. The Chamber recalls regulation 24(5) of the RoC, which stipulates that:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

a. OPCV Application of 26 May 2017 and OPCV Application of 2 June 2017

26. As a preliminary remark, the Chamber notes that the OPCV maintained that the Chamber had introduced new rules on the applicable procedure when a party wishes to react to Defence observations on requests for reparations.³⁰ The Chamber considers that, contrary to the OPCV's claim,³¹ the allegations and evidence contained in a request for reparations do constitute the "legal argument" in issue for demonstrating that the person who submitted the request for reparations is indeed a victim, as defined by rule 85(a) of the Rules of Procedure and Evidence. The Chamber recalls that, in accordance with rule 94 of the Rules of Procedure and Evidence, in a request for reparations the claimant shall, *inter alia*: describe the injury, loss or harm;³² indicate the location and date of the incident, and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;³³ and, to the extent possible, provide any relevant supporting documentation.³⁴ Lastly, the Chamber draws the OPCV's attention to the Court's established case law, which provides that when the Prosecutor or the Defence submit observations on an application made by a person requesting leave from the Chamber to participate as a victim in the trial of an accused, the Prosecutor

³⁰ OPCV Application of 26 May 2017, para. 8. OPCV Application of 2 June 2017, para. 11.

³¹ OPCV Application of 26 May 2017, para. 8.

³² Rule 94(1)(b) of the Rules of Procedure and Evidence.

³³ Rule 94(1)(c) of the Rules of Procedure and Evidence.

³⁴ Rule 94(1)(g) of the Rules of Procedure and Evidence.

and the Defence may exercise their right to respond to the application for participation.³⁵

27. Regarding the merits of the requests, the OPCV asserted that the Chamber should authorize it to reply to the Defence Observations of 22, 30 and 31 May 2017 to enable the OPCV to properly defend the interests of the potentially eligible victims it is representing against the Defence's "constant objection" to all the applications transmitted to it.³⁶ The OPCV held that, since the issues raised by the Defence have not yet been decided in the current proceedings, an adversarial debate enabling an exchange of views between the parties was necessary in order to assist the Chamber in its determination of the issues raised.³⁷

28. The Chamber considers that the OPCV has demonstrated that the Defence Observations of 22, 30 and 31 May 2017 do indeed raise new issues, as stipulated in regulation 24(5) of the RoC, on which the Chamber must decide for the first time, and that it must receive any relevant information in this regard. The Chamber therefore grants the OPCV leave to reply to the Defence Observations of 22, 30 and 31 May 2017, by 22 June 2017.

³⁵ Rule 89(1) of the Rules of Procedure and Evidence and, for example, Pre-Trial Chamber I, "Decision Appointing *Ad Hoc* Counsel and Establishing a Deadline for the Prosecution and the *Ad Hoc* Counsel to Submit Observations on the Applications of Applicants a/0001/06 to a/0003/06", dated 18 May 2006, ICC-01/04-147, p. 3.

³⁶ OPCV Application of 26 May 2017, paras. 7, 11 and p. 6. The Chamber notes that the OPCV repeats in full the argument presented in its Application of 26 May 2017 to justify the need to submit a reply to the Defence Observations of 30 May 2017 and to the Defence Observations of 31 May 2017 (OPCV Application of 2 June 2017, paras. 9-11).

³⁷ OPCV Application of 26 May 2017, para. 8.

**b. Application of the Legal Representatives of the V02 Group of Victims
of 2 June 2017**

29. The Legal Representatives of the V02 Group of Victims sought the leave of the Chamber to reply to the Defence Response of 30 May 2017, to which were appended two annexes relating to the Congolese legal provisions on civil status.³⁸ They contended in this regard that the Defence was casting doubt on the credibility and reliability of the documents submitted by the potential victims, even by the victims who had been granted the status of participating victims in the case against Mr Lubanga.³⁹ They considered this to be a violation of the victims' rights, given that the Chamber had ordered collective reparations and that Trial Chamber I, in its previous composition, had ruled that all of the documents submitted to prove the victims' identity were admissible.⁴⁰

30. Regarding the issue of the documents that a victim can submit to prove his or her identity, the Chamber emphasizes that, as the Legal Representatives of the V02 Group of Victims correctly asserted, the Court has consistently held that a natural person who applies for participating-victim status in the trial of an accused may use official or unofficial identity documents or any other means of demonstrating their identities, and, in the absence of acceptable documentation, a statement signed by two credible witnesses establishing the applicant's identity is acceptable.⁴¹ The Appeals Chamber has ruled that these proofs of identity are also acceptable at the reparations stage.⁴² Consequently, the Chamber does not consider that further observations on that point are needed.

³⁸ Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017, para. 2.

³⁹ Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017, para. 5.

⁴⁰ Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017, paras. 6-7.

⁴¹ Appeals Chamber, "Order for Reparations", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 57.

⁴² Appeals Chamber, "Order for Reparations", 3 March 2015, ICC-01/04-01/06-3129-AnxA, para. 57. Also *The Prosecutor v. Germain Katanga*, "Ordonnance de réparation en vertu de l'article 75 du Statut", para. 71.

31. However, the Chamber considers it appropriate to authorize the Legal Representatives of the V02 Group of Victims to submit their views on the fact that the Defence has contested the credibility and reliability of all the documents submitted by the potentially eligible victims to prove the kinship between the indirect victim and the direct victim, and the date of birth of the direct victim. Consequently, the Chamber authorizes the Legal Representatives of the V02 Group of Victims to reply to the Defence Response of 29 May 2017 with regard to that issue by 22 June 2017.

32. Lastly, the Chamber considers that the Defence should have the right of last reply on the issues raised. Accordingly, the Defence is authorized to file a response to the OPCV's reply and a response to the reply of the Legal Representatives of the V02 Group of Victims by 28 June 2017.

FOR THESE REASONS, the Chamber

GRANTS the remedy sought in the OPCV Applications of 26 May and 2 June 2017 and the Application of the Legal Representatives of the V02 Group of Victims of 2 June 2017;

AUTHORIZES the OPCV to reply to the Defence Observations of 22, 30 and 31 May 2017 by 22 June 2017;

AUTHORIZES the Legal Representatives of the V02 Group of Victims to reply to the Defence Response of 29 May 2017 by 22 June 2017; and

AUTHORIZES the Defence to respond to the OPCV Reply and to the Reply of the Legal Representatives of the V02 Group of Victims by 28 June 2017.

Done in English and French, the French version being authoritative.

[signed]

Judge Marc Perrin de Brichambaut

Presiding Judge

[signed]

[signed]

Judge Olga Herrera Carbuccia

Judge Péter Kovács

Dated this 16 June 2017

At The Hague, Netherlands